

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SDS LUMBER CO.,

Petitioner,

v.

KEVIN GREGORY et al.,

Claimants.

CASE NO. C20-5767 MJP

ORDER GRANTING
PETITIONER'S MOTION FOR
LEAVE TO AMEND COMPLAINT

This matter comes before the Court upon Petitioner SDS Lumber Co.'s Motion to Amend the Complaint. (Dkt. No. 23.) Having reviewed the Motion, the Response (Dkt. No. 26), the Reply (Dkt. No. 28), and the related record, the Court GRANTS the Motion.

Background

On March 21, 2018, Petitioner's tugboat, the DAUBY, was on a one-day voyage from Bingen, Washington, to Tansy Point, Oregon, navigating downriver on the main shipping channel in the navigable waters of the Columbia River. (Dkt. No. 1 ("Compl.") at 2.) The DAUBY was towing two barges, one empty and the other filled with wood chips. (Id.) At 7:40

1 am, while surrounded by heavy fog, the DAUBY collided with a 20-foot recreational vessel with
 2 the Claimants Kevin and Jacob Gregory aboard. (Id.) SDS alleges that the Gregorlys were
 3 crossing the shipping channel in heavy fog when their main outboard engine died. (Id.) The
 4 Gregorlys were ejected and had to be rescued by good Samaritans, while the captain of the
 5 DAUBY was unaware of the collision and did not stop. (Id.)

6 After the Gregorlys filed a lawsuit in Cowlitz County Superior Court on June 1, 2020,
 7 Gregory v. S.D.S. Lumber Co. and Gorge Leasing Co., Case No. 20-2-00393-08, SDS filed this
 8 action to limit its liability pursuant to 46 U.S.C. §§30501-30512. SDS approximates the value of
 9 the Gregorlys' claims to be \$2,650,000 based on a letter from their counsel. (Compl. at 3.)

10 On October 29, 2020, in the Parties' Joint Status Report, Claimants asserted that SDS
 11 failed to plead exoneration, which "amounts to a confession of liability for the collision by the
 12 Petitioner." (Dkt. No. 22 at 3.) SDS disagrees, citing its allegation in the Complaint that it is
 13 "without fault or negligence, as defined under 46 U.S.C. §§30501-30512." (See Compl. at 3.)
 14 Nevertheless, "[f]or clarity," SDS now moves to explicitly disclaim liability by adding the term:
 15 "exoneration from or" before "limitation of liability" in an amended complaint. (Dkt. No. 23.)

16 Discussion

17 Under Federal Rule of Civil Procedure 15(a), leave to amend "shall be freely given when
 18 justice so requires." See Fed. R. Civ. P. 15(a)(2); AmerisourceBergen Corp. v. Dialysist W., Inc.,
 19 465 F.3d 946, 951 (9th Cir. 2006). The purpose of Rule 15 is "to facilitate decision on the
 20 merits, rather than on the pleadings or technicalities." Lopez v. Smith, 203 F.3d 1122, 1127 (9th
 21 Cir. 2000). "But a district court need not grant leave to amend where the amendment: (1)
 22 prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in
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litigation; or (4) is futile.” AmerisourceBergen, 465 F.3d at 951. The Claimants only object on the fourth ground, arguing that amendment is futile. (See Dkt. No. 26.)

As an initial matter, SDS moves to strike the exhibits relied on in Claimants’ Response. (Dkt. No. 28 at 1 (citing Dkt. No. 27, Ex. A-D).) These exhibits are part of the United States Coast Guard’s investigation file into the collision, and include (1) the captain of the DAUBY’s recorded statement to the Coast Guard; (2) the Coast Guard Report of Marine Casualty; (3) the Coast Guard’s Administrative Complaint; and (4) a copy of the Settlement Agreement between the Captain and the Coast Guard suspending his license for two months. Claimants rely exclusively on this material to argue that because the DAUBY committed several statutory violations—as determined by the Coast Guard’s investigation—SDS cannot plausibly and in good faith allege that it was not at fault for the collision. But as SDS notes, Claimants exhibits are inadmissible as evidence in this matter:

[N]o part of a report of a marine casualty investigation conducted under section 6301 of this title, including findings of fact, opinions, recommendations, deliberations, or conclusions, shall be admissible as evidence or subject to discovery in any civil or administrative proceedings, other than an administrative proceeding initiated by the United States.

46 USCS § 6308(a). Further, even if the Court were to consider these exhibits, Claimants cite no authority that requires the Court to accept the Coast Guard’s findings.

“The standard for granting leave to amend is generous.” Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 701 (9th Cir. 1988). Leave should be granted where the court can “conceive of facts’ that would render plaintiff’s claim viable” and can “discern from the record no reason why leave to amend should be denied.” Id. (quoting Scott v. Eversole Mortuary, 522 F.2d at 1116.) Here, the Complaint alleges that in heavy fog Claimants were crossing the main shipping channel of the Columbia River in a small recreational boat when they stopped in the

1 middle of the channel because their engine died. (See Compl. at 2.) These allegations are
2 sufficient, if accepted as true, to state a claim for SDS's exoneration based on the Claimants'
3 potential culpability in causing the collision. See, Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
4 (citation omitted). This is especially so when it is the Claimants who have the burden of proving
5 SDS was negligent. See Walston v. Lambertsen, 349 F.2d 660, 663 (9th Cir. 1965) ("In the
6 admiralty proceeding in which a shipowner seeks to exonerate himself from liability or to limit
7 his liability, the burden of proving negligence or unseaworthiness rests upon the claimant.")

8 **Conclusion**

9 In sum, because Claimants have failed to demonstrate amendment would be futile, the
10 Motion for Leave to Amend is GRANTED.

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12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated January 11, 2021.

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16 Marsha J. Pechman
17 United States Senior District Judge
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